IN THEHIGHCOURTOFJUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO.13850 OF 2007

M/s. Packing Paper Products ...Appellants
Vs.
M/s. Nicaf Private Ltd. & Anr. ...Respondents

Mr. Ketan Parekh with Ms. Kunjal Sanghavi & Mr. Deepak Chaurasia i/b. M/s. Parekh & Co. for Appellants
Mr. Ashok K. Goel alongwith Mr. Vikram A. Goel for Respondents

CORAM: SMT.ROSHAN DALVI,J.
DATED: 28TH JUNE, 2007

ORAL JUDGMENT

1. The Appellant has challenged the judgment dated 22nd December, 2006 of the Bombay City Civil Court granting an injunction to the Respondents against the Appellants and restraining the Appellants from constructing a compound wall in a part of the suit premises, putting up any permanent or temporary structure in the compulsory open space and using a particular compulsory open space which has to be left open to the skies under the Development Control Rules (DC Rules). There is no dispute between the parties in this Suit about any construction in the

compulsory open space, other than the compound wall. There is also no dispute between the parties with regard to the access road, which is meant only for ingress and egress and is to be left open to the sky.

2. The Appellant contends that he is the tenant of the Respondent. He has filed a declaratory suit in the Bombay Small Causes Court (Rent Court) against the Respondent in 1985. The Respondent has filed a suit for eviction against him in 2001.

3. In his Declaratory Suit he has sought a declaration of tenancy which he got from the Respondent under an agreement executed in 1972. That suit is pending. He claims that, that agreement governs the right of parties with regard to the injunction applied for by the Respondent in the Suit filed in Bombay City Civil Court and hence, that Court would not have the inherent jurisdiction to try the suit and the Suit should have been filed only in a Small Causes Court, Bombay. He also claims on merits that the case for injunction was not made out by virtue of the oral agreement that has transpired between the parties.

4. The learned Judge in the impugned judgment has decided the question of jurisdiction of his Court as well as the merits

of the case. The learned Judge has granted the injunction applied for to the Respondent. Hence, this Appeal.

5. The only narrow question of law in this appeal is with regard to whether a suit for injunction in respect of certain constructions put up on the tenanted premises can be granted by the Civil Court. Besides this, the evidence led by the parties with regard to the construction put up as well as the user of the premises has to be considered. The copies of the entire evidence and documents including the plan in respect of the Respondents' entire property are produced and hence, this Appeal is being disposed off at the admission stage itself.

6. The tenanted premises is one shed of 5000sq. ft. area and shown bounded in green on the plan which is a part of the record. Open space to the North East part of the property of the landlord shown in Yellow in the plan. The 10 ft. open access is shown in blue in the plan on record. The agreement of 1972 which is the admitted document between the parties shows not only the extent of the tenanted premises but the permitted user of the tenanted premises, in Clause 6(a) thus:-

"Clause 6(a): The selling Agents shall make available

about 5000 sq. ft. of the area from the Industrial Shed belonging to the Selling Agents. The principal shall, subject to the Municipal Rules in that behalf, be free to use the open space on the North East side of the Shed leaving the 10 passage for access and egress, and to keep their articles, goods, and belongings and vehicles."

7. Consequently it can be seen that the Appellant would be a tenant in respect of the industrial shed admeasuring 5000 sq. ft belonging to the Respondent. The Appellant would also be entitled to use and to keep his articles etc in the open space on the North East side of the shed leaving a 10 ft passage for access and egress. A 10 ft. passage for access is to be kept open.

8. The Appellant constructed a compound wall without Municipal permission on the premises of the landlord near the open space tenanted to the Appellant for user and for keeping his articles. It is an admitted position that, that was constructed in about 1985 and was once got demolished by the Respondents. It is, therefore, reconstructed. The suit of the Respondent is for the prohibitory injunction against construction of any compound wall. The suit is also for a mandatory injunction to demolish the newly constructed

compound wall.

9. There is no dispute between the parties with regard to the industrial shed. The parties also agree that the open space to the North East of the industrial shed is only given to the Appellant for user and keeping articles/vehicles. It need hardly be stated that no construction can be put up on a open space without permission of the Planning Authority of the City (MMC), even if permitted by the landlord. There is no dispute between the parties with regard to the compulsory open space for access except for the construction of the compound wall in such open space.

10. It is further admitted between the parties that a DP road came to be constructed and the land of the Respondent came to be acquired for road in 1984-85. The road has remained since. Consequent upon such acquisition a part of the open space allowed for user and keeping under the agreement of 1972 to the Appellant went into the road. The Appellant contends that, therefore, the construction of the wall became necessary.

11. It is further admitted that this construction of the wall has been put up without prior written permission of the BMC. The evidence of the Appellant shows that an oral

application was made and it was granted orally by the MMC, an act completely illegal if so done.

12. In the premises, admittedly belonging to the landlord Respondent, the Appellant cannot put any construction without his permission. The Appellant cannot put up any construction even with his permission and without the permission of the MMC. The Appellant has sought to put up a compound wall without any such permission. Hence, the suit for injunction. A mandatory injunction order of demolishing and removal of the compound wall has been passed in the impugned judgment.

13. The main contention of the Appellant – is that the dispute is for the tenanted premises between a landlord and a tenant, and the suit of the landlord tantamounts to an application under the Bombay Rent Act since it is a claim or question arises out of the act and therefore, falls within the mischief of Section 28 of the said Act by which the inherent jurisdiction of the Civil Court is ousted.

14. Section 28 of the Bombay Rent Act, which has been off used and reproduced, grants exclusive jurisdiction only to the Court of Small Causes at Bombay (Rent Court) in respect of all suits and proceedings between the landlord and tenant

for

(i) recovery of rent,

(ii) recovery of possession,

(iii) relating to recovery of rent or possession of any premises tenanted,

and also

(iv) for any application made under the Act

and

(v) to deal with any claim or question arising out of

(a) the Act or

(b) any of its provisions.

15. The suit filed by the Respondent is a suit for injunction simplicitor. The suit is neither for recovery of rent, nor for recovery of possession of any premises nor relating to the recovery of rent, nor relating to the recovery of possession of the premises. It is not not shown under which provision of the Rent Act the issues in the suit could have been determined as an application or claim made under the Rent Act or under which provision of the Rent Act any question arising for determination in the Respondent's suit for injunctions simplicitor could be tried.

16. The Respondent's Advocate upon the Courts' query contended that an application for the reliefs sought in the

suit if made in the Rent Court would have to be made under Section 12(1) of the Rent Act. Section 12(1) relates to the disentitlement of landlords for recovery of possession of the tenanted premises until the tenant pays or is ready and willing to pay the rent and observes and performs the conditions of tenancy which are consistent with the Rent Act. The disentitlement under Section 12 is only for recovery of rent or recovery the possession of the tenanted premises. There is no disentitlement under that Section for grant of any injunction.

17. It is contended on behalf of the Appellant that the suit seeks to enforce the negative covenant in the admitted agreement between the parties of 1972. It requires the Appellant not to obstruct other persons from using the open space which is meant for the purpose of access or to put up construction of any temporary or permanent nature in the open space. This, therefore, is one of the conditions of tenancy. The suit claims that those conditions are breached. The suit requires, enforcement of the observations and performance of those conditions and hence, the reliefs sought in the suit must be by way of an application or a claim arising under the Act and specifically under the provisions contained in Section 12(1) thereof. The argument is mis-conceived. Section 12(1) only shows disentitlement of

landlords to sue until a particular time. Neither the landlord nor the tenant can sue under that provision. When there is a breach of the terms and conditions of tenancy, the landlord's disentitlement to sue would come to an end. If the landlord seeks recovery of possession for non-observance and non-performance of certain conditions of tenancy, he would sue under Section 13 of the Bombay Rent Act. Neither the landlord nor the tenant who seeks only an injunction, either prohibitory or mandatory, can sue under Section 12 of the Act.

18. The Rent Act essentially seeks to protect tenants from actions for recovery of possession or those relating thereto. It does not go further. It specifically omits and does not protect landlords seeking injunction simplicitor. Consequently under Section 28 the inherent jurisdiction granted to the Special Court is only for matters relating to recovery of rent, and matters relating to recovery of possession. The Suit for injunction, therefore, must continue to remain only in the Civil Court.

19. The Appellant states that even on merits the injunction could not have been granted. The Appellant's Advocate has drawn my attention to the length of the evidence recorded by the trial Court. The large chunk of the evidence does not

relate to the legal rights of the parties. It does not matter that the Respondent does not know the dimensions of the compound wall or other particulars thereof. The rights of the parties are only dependent upon the contractual relationship between themselves as per the agreement showing the tenanted premises, the user of the premises and negative covenants to be performed on the part of the tenant and the legal position contained in the Municipal Act – under which no construction can be put up without permission of the MMC.

20. In fact it may be mentioned that in suits such as these when the agreement between the parties and, tenanted premises, are admitted and the rights of the parties are dependent only upon the question of law and the interpretation of documents, no oral evidence is even called for. It is seen that for the determination of the judgment in the suit no oral evidence which has been led has been of any use – including the evidence of applying for and taking oral permission of the MMC. The issues in the suit including the issue relating to the inherent jurisdiction of the Court and the legal right of the Respondent as a landlord are dependent upon and can be decided upon the interpretation of the admitted documents between the parties and the position in law.

21. It is seen that the learned Judge has correctly considered the documents between the parties and the law applicable to this case. The injunction is correctly granted. The Appeal is dismissed. However, the Respondent shall not act upon the mandatory order and injunction to demolish and remove the newly constructed compound wall for a period of 4 weeks from today. The Civil Application is disposed off accordingly.

(SMT. ROSHAN DALVI, J.)